



10



Cobalt Lake Controversy



Cobalt Lake Controversy.

TO ALL WHO VALUE THE HONOUR OF ONTARIO AND THE PUBLIC CREDIT

The following facts and documents relating to the Cobalt Lake controversy will be of interest.

In December, 1905, certain parties decided to explore in the Cobalt District. Their representative went to the Parliament Buildings, Toronto, and subsequently to Haileybury, and asked for all information as to regulations, etc., and the Government Officials gave him a printed copy of regulations and a map showing Cobalt Lake open for exploration. On the faith of this the work of exploring for minerals was proceeded with openly and to the knowledge of the Government representative in the district, who made no objection.

As the result of the expenditure of a large sum of money in such work a discovery was made on the 7th of March, 1906, and a claim of twenty acres provided for by the Statute and Regulations was staked out.

The Florence Mining Company, Limited, which became entitled to the claim, offered to submit proof in any form the Crown Land Department desired showing its vested right to the twenty acres, and prepared and submitted to the Department of Crown Lands affidavits proving their right to the property, but the Department refused to consider them. The affidavits were again submitted and again returned without consideration. Instead of the matter being dealt with according to law an ex post facto Statute was rushed through the Legislature, being read three times in one day. An extract from this Statute printed at page 16 makes it necessary to characterize the Legislation.

A petition was then presented, asking among other things that the territory in question should be dealt with under the general law and that the rights and claims of the petitioners should be investigated and considered. Counsel on behalf of the petitioners appeared before the Cabinet and urged the granting of the petition. An investigation was, however, refused and the Government attempted to sell the bed of the lake, including the twenty acres belonging to the Florence Company. After formal protests and the filing of a Caution a Patent was issued to the alleged purchaser, which it is contended was wholly unauthorized and is ultra vires.

Before this was done the Florence Company offered to submit the question as to whether Cobalt Lake was open for exploration at the time of the said discovery to the Court of Appeal and if this

reasonable suggestion had been acted on the matter could long ago have been settled.

(See letter on page 15).

The Florence Company then proceeded with the action referred to at page 3, and after the case was set down for trial an Act was passed by the Legislature attempting to confiscate the vested statutory rights of the Florence Company. Thereupon the petition set forth at pages 2-6 was presented to the Governor-General in Council for the allowance of the said Act. In the said action several interlocutory applications have been made, in all of which the Florence Company succeeded. In connection with these applications the statements of fact in the petition for Disallowance have been verified under oath and particularly the following have been proved:—

1. A valuable discovery of mineral in place under Cobalt Lake was made on March 7th, 1906.

2. That all conditions demanded by the Mines Act and Regulations re staking, etc., were fulfilled by those making discovery.

3. That Cobalt Lake was open for exploration at the time the discovery was made.

There can, therefore, now be no reasonable doubt that the Florence Company had before the legislation above referred to become entitled to twenty acres, part of the bed of Cobalt Lake. The question, of course, remains as to whether these rights can be confiscated by ex post facto legislation.

This involves the momentous question whether in the Province of Ontario there is any **security for property or certainty of title** upon which investors can safely rely. A memorandum is attached as to the statements in the Legislature for the purpose of procuring the legislation in question. The letter at page 16 shows that the Government knowingly sold a law suit. The extracts from the Statutes printed at page 16 are sufficient to establish without any further argument that the legislation amounts to sheer confiscation without compensation, or in other words to "Legislative robbery," as it was characterized by one of the judges of the Court of Appeal in a recent case.

**PETITION REFERRED TO IN DOMINION ORDER-IN-
COUNCIL OF 14TH SEPTEMBER, 1908.**

TO HIS EXCELLENCY THE GOVERNOR-GENERAL
OF CANADA IN COUNCIL.

The Petition of the undersigned **HUMBLY SHOWETH:**

1. THAT your petitioners are a Mining Company duly incorporated and licensed under the laws of the Province of Ontario.

2. THAT your petitioners are entitled to twenty acres known as J. S. 71, being part of the land under the waters of Cobalt Lake

in the Township of Coleman in the Province of Ontario and to the minerals therein under and by virtue of the discovery by Mr. W. J. Green of valuable minerals thereon on the seventh day of March, 1906, and of the rights acquired by said Green in said lands and minerals under the provisions of the Mines Act of the Province of Ontario and the regulations thereunder and the usual practice of the Crown.

3. That your petitioners say that under an Order-in-Council passed on the 30th October, 1905, by the Lieutenant-Governor of the Province of Ontario, Cobalt Lake, which is part of the Township of Coleman, was open for exploration at the time of the said discovery by the said W. J. Green and that he became entitled to the said property upon compliance with the provisions of the Mines Act of the Province of Ontario and the regulations thereunder by the Lieutenant-Governor of the Province of Ontario in Council.

4. THAT the said W. J. Green did comply in all respects with the provisions of the Mines Act and Regulations and became entitled to the said lands and minerals.

5. After the said W. J. Green had complied with all the conditions necessary to entitle him to the said lands and minerals he assigned his right, title and interest therein to your Petitioners.

6. THAT your Petitioners have always been ready and willing to prove conclusively all the facts upon which your Petitioners' claim is based and the absolute right of your Petitioners to the said lands and minerals therein by evidence under oath, but have been refused an opportunity to do so, although they repeatedly asked the Ontario Government for such an opportunity and offered to the Ontario Government and the members thereof to prove the said facts, and your Petitioners' rights to the said lands and minerals by conclusive and satisfactory evidence.

7. THAT after said opportunity had been refused to your Petitioners, your Petitioners filed a caution in the proper Land Titles Office showing your Petitioners right to said land and minerals, but notwithstanding such caution a patent was issued to the Cobalt Lake Mining Company (Limited), with full notice and knowledge by the Ontario Government and by the said Cobalt Lake Mining Company of your Petitioners' rights to the said lands and minerals.

8. THAT thereupon your Petitioners instituted an action in His Majesty's High Court of Justice for this Province claiming:

(a) A declaration that the said Letters Patent to the Cobalt Lake Mining Company, Limited, the defendant in the said action, were issued erroneously by mistake and improvidently and are utterly void as against your Petitioners, and that your Petitioners are entitled to the said lands and minerals;

(b) A declaration that the rights of the Cobalt Lake Mining Company (Limited), if any, under the said Letters Patent, are subject to your Petitioners' said rights;

(e) An injunction restraining the Cobalt Lake Mining Company their servants, workmen or agents from extracting or removing any ores or minerals from the said Mining Claim J. S. 71, or from in any way interfering with your Petitioners' exclusive right of possession thereof;

(d) An account of all ore or minerals extracted or removed from the said lands or any part thereof.

(c) Judgment setting aside as ultra vires and void the Letters Patent in favor of the Cobalt Lake Mining Company (Limited) as against your Petitioners or in the alternative confining the operation thereof to the lands therein described other than the lands claimed by your petitioners;

(f) Your Petitioners costs of the action;

(g) Such further or other relief as the Court may deem expedient.

9. Your Petitioners have proceeded diligently with the said action and without any delay on their part whatever, and the said action was duly set down for trial at the current non-jury sittings of the said High Court for the City of Toronto, being the earliest sittings at which the same could be tried.

10. Your Petitioners, confident of success in their said action, have gone to very considerable expense in preparing for the trial thereof, expecting from day to day that the trial would come on for hearing. While matters were in this position a Bill was introduced into the Legislature of the Province of Ontario purporting to deal with the question at issue in the said action and intended to interfere with the course of the said litigation and with your Petitioners' rights to the said lands and minerals.

11. The Ontario Legislature were informed by the Premier and the Attorney-General as the ground for passing the said Act that at the time of the said discovery

(1) The map showing Cobalt Lake to be withdrawn was displayed in the Recorder's Office at the time of the alleged discovery

(2) And also that the Order-in-Council (withdrawing Cobalt Lake) was also then posted up.

12. Your Petitioners are prepared to prove that both of the said statements were absolutely without any foundation in fact and have informed the Premier of Ontario that in making the said statements he was completely misinformed, and have requested him to allow your Petitioners to have a photograph of the said map made, but he has refused your Petitioners the right to do so. Your Petitioners could show by such photograph that their contention with regard to the map is absolutely correct.

13. So far from any map being exhibited in the Recorder's Office showing Cobalt Lake to be withdrawn at the time of the said discovery, the Recorder at Haileybury handed to the said W. J. Green a map indicating Cobalt Lake to be open for exploration. On the faith of the said map and the regulations showing that if he made a discovery he would be entitled to a mining

claim of twenty acres, the said Green expended a considerable amount of money in exploring the said land by a diamond drill and otherwise, and in making the said discovery, and in complying with the said Mines Act and the regulations passed in pursuance thereof.

14. As a matter of fact no Order-in-Council was posted up in the Recorder's Office at Haileybury at the time of the said discovery showing Cobalt Lake to have been withdrawn.

15. It now appears that on the 14th day of August, 1905, an Order-in-Council was passed withdrawing from exploration the Gillies Timber Limit and also Cobalt Lake and Kerr Lake. The said Order-in-Council was not at the time published in the Ontario Gazette. Two weeks later and on the 28th day of August an Order-in Council was passed withdrawing the Township of Coleman and three other townships from exploration. On the 30th day of October, 1905, an Order-in-Council was passed authorizing the recording of mining claims in said Township of Coleman and said three other townships and constituting said Township of Coleman a special mining division. The Order-in-Council of 14th August, 1905, expressly recites that it was passed in view of the "desirability of exercising careful judgment in arriving at a conclusion with reference to the adoption of a scheme or system of dealing with the mining question." The conclusion arrived at was expressed in the Order-in-Council of 30th October, 1905, the legal effect of which was to throw Cobalt Lake as part of the Township of Coleman open for exploration and to make Cobalt Lake (which is wholly included within the Township of Coleman) a part of the said mining division in which a license had at the date of the discovery by said Green, a statutory right to stake out a mining claim.

16. There were notices posted up showing that the Gillies Limit had been withdrawn but your Petitioners submit that the reason that Cobalt Lake was not mentioned in these notices as withdrawn was that Cobalt Lake was thrown open for exploration by the Order-in-Council of the 30th October, 1905.

17. The Bill above referred to has been passed by the Ontario Legislature being entitled "An Act to confirm the title to Cobalt Lake and Kerr Lake."

YOUR PETITIONERS SUBMIT:

(a) THAT the Crown having consented to the said Mines Act, the said regulations and the said Order-in-Council of 30th October, the honour of the Crown and credit of the Province were pledged to the safeguarding and protection of the rights of your Petitioners acquired thereunder and that said Act now petitioned against is degrading to the honour and dignity of the Crown.

(b) THAT the said Act purports to confiscate the rights and properties of your petitioners without compensation.

(c) THAT your petitioners are entitled to have their rights

determined by the High Court of Justice according to law subject to appeal to His Majesty through the Judicial Committee of the Privy Council.

(d) THAT the said Act is an unwarranted and unjust interference with property and vested rights.

(e) THAT the said Act, if not disallowed, would be destructive of confidence in the credit of Ontario and of the other Provinces of Canada and would, therefore, be very prejudicial to the Dominion as a whole.

(f) THAT the said Act is not a legislative act authorized by the British North America Act.

(g) THAT the said Act is retroactive and is an attempt at confiscation wholly unwarranted and unjust.

(h) THAT the principle of the said Bill if applied would render all titles in Canada, not secured by special legislation, insecure and uncertain.

(i) THAT the said Act is a virtual repudiation by the Province of its obligations.

(j) THAT the said Act is an abuse of alleged legislative power to accomplish against the protests of a large minority of the Legislature what would be restrained by injunction if attempted by an individual.

(k) THAT the Act was based and supported in the Legislature on assumptions and allegations which have no foundation in fact and its object is to debar your petitioners from disproving the said allegations upon which the Legislature erroneously proceeded and of establishing your Petitioners' rights to the said lands and minerals.

(l) THAT your Petitioners are entitled to the protection of the provisions of Magna Charta that their property should not be taken from them except by due process of law and that said Act being contrary to natural justice and inconsistent with the spirit of British institutions, should be disallowed.

WHEREFORE YOUR PETITIONERS PRAY that the said Act being entitled "An Act to Confirm the Titles to Cobalt Lake and Kerr Lake" may be disallowed pursuant to the authority vested in Your Excellency in Council by the British North America Act.

AND YOUR PETITIONERS WILL EVER PRAY:

Dated this 26th day of April, 1907.

THE FLORENCE MINING CO., LTD.,

S. Sinclair, Vice-Pres.
J. Hobson, Sec.

COBALT LAKE

MEMORANDUM REGARDING STATEMENTS TO THE LEGISLATURE WHICH SECURED THE PASSING OF THE ACT AFFECTING THE TITLE TO COBALT LAKE.

THE PRIME MINISTER'S STATEMENT.

In THE EVENING TELEGRAM of April 5th, 1907, the Premier is reported to have said "The Recorder had been present during one of the interviews granted by the Government to the claimants and had emphatically stated that the map showing the Lake to be withdrawn was displayed in his office at the time alleged discoveries were made on Cobalt Lake."

There was only one interview granted by the Government to those interested in the Florence Mining Company. This was when their petition asking among other things that the matter should be considered and investigated was presented. At that interview the Recorder, Mr. Smith, was present and was prepared to give evidence but the Premier stated that while they could swear at Mr. Smith they could not swear him and no such statement as above referred to was made in the presence of that deputation. What statements were made by Mr. Smith and others when the Florence Company was not represented we have no means of knowing but an investigation such as asked for would have given the Florence Mining Company an opportunity of answering, and showing that a map was not displayed in the Recorder's office showing the Lake to be withdrawn. The statement that the map showing the Lake (Cobalt Lake) to be withdrawn was displayed in the Recorder's office at the time of Mr. Green's discovery has now been shown under oath to be quite contrary to the fact.

PERMISSION TO PHOTOCGRAPH THE MAP REFUSED.

An application was made at the time by letter dated 22nd April, 1907, to the Premier asking for permission to make a photograph of the map he referred to under such conditions as the Government might see fit to prescribe. This request was at the time refused. Subsequently, by evidence in the Court proceedings, the Florence Company proved conclusively that at the time referred to there was no map displayed in the Recorder's office showing Cobalt Lake to be withdrawn.

PERMISSION GIVEN AND PHOTOGRAPH TAKEN.

After this proof was given a further application by letter was made to the Honourable the Minister of Lands, Forests and

Mines for permission to make a photograph of the map to which the Honourable the Premier referred, and recently this permission was granted. A photograph was at once made. This map does not in any way indicate Cobalt Lake to have been withdrawn from exploration.

THE DREANY APPLICATION.

The map has the letter "a" on the northeast part of Cobalt Lake and this appears in the photograph. At an earlier time one Dreany had made an application for the property. At the time the so-called Dreany application was pending maps were handed out from the Recorder's office with the letter "a" placed, as now appears on the map photographed. Subsequently, when the Inspector reported against this application, on the ground that there was no discovery, the map with the letter "a" would no longer represent the true position and copies of maps of Coleman were handed out by the Recorder without the letter "a" on Cobalt Lake.

So far from indicating Cobalt Lake was withdrawn, the map either with or without the letter "a" indicated that it was open for exploration at the time such maps were handed out.

THE MAP GIVEN TO MR. GREEN.

It was such a map, without the letter "a" and showing Cobalt Lake to be open for exploration, that was handed Mr. Green.

THE REGULATIONS ALSO SHOWED IT TO BE OPENED.

Mr. Green had also been previously furnished with regulations containing a copy of the Order-in-Council of 30th October, 1905, and also containing the statement that if a licensee made a discovery he would have the right to the claim. In fact the express words of the Statute, "He shall have the right to work the same" were quoted in the copy handed Mr. Green.

THE GLOBE'S REPORT.

In the evening edition of THE GLOBE of April 5th, 1907, the Prime Minister is reported to have said that the Recorder had been present during one of the interviews granted by the Government to the claimants, and had emphatically stated that the map showing the Lakes to be withdrawn was displayed in his office at the time alleged discoveries were made on Cobalt Lake.

THE MAIL AND EMPIRE REPORT.

THE MAIL AND EMPIRE of April 6th reports the Premier as having said "The Recorder had however, shown the map and the notice which had been posted in his office."

THE WORLD'S REPORT.

THE WORLD of the 6th of April reports the Premier as approving Honourable Mr. Foy's statement to the Legislature that

"the original notice posted in the Cobalt office was produced before the contending parties."

THE MAIL AND EMPIRE and WORLD do not expressly give the time at which the map and notice were said by the Prime Minister to be in the office of the Recorder, but this is supplied by the other papers. There is no reason whatever to doubt the accuracy of the information given out at the time that in order to secure the passing of the Act in question the Premier stated to the House that the Order-in-Council of August withdrawing Cobalt Lake was posted up in the Recorder's office at the time of Mr. Green's discovery.

It has since been proved conclusively that this was not the case. The evidence above referred to of itself puts this beyond question. Besides this evidence, these statements to the Legislature are quite at variance with the sworn statements of independent witnesses of high standing and unimpeachable character.

THE RECORDER'S ADMISSION.

It is unnecessary to pursue this as the Recorder has admitted that this Order-in-Council was taken down when the office walls were being oiled. The statement of the Recorder made to Mr. Green and others at the time, that this Order-in-Council had been posted up in the old office but had never been posted up in his new office. His statement now is that it was posted up in the new office but taken down when the office walls were being oiled. No matter which statement is accepted, it is clear that there was no such Order-in-Council posted up in the Recorder's office at the time of Mr. Green's enquiries or at the time of his discovery.

THE ATTORNEY-GENERAL'S STATEMENTS.

In THE WORLD of April 6th, 1907, the Honourable Mr. Foy is thus reported: "Hon. Mr. Foy again went into the details of the withdrawal of the lake properties, quoting the act and the Order-in-Council, and citing the evidence when the original notice posted in the Cobalt office was produced before the contending parties."

In THE WORLD of 18th April, the Honourable Mr. Foy is reported to have said "The case has been presented before to the Mining Commissioner, to the Department and to the whole Cabinet, which heard the evidence patiently at great length."

In this respect the learned Attorney-General was completely misinformed. In the first place this case never went before the Mining Commissioner. In the second place, the evidence in this case was never heard either by the Department or the Cabinet patiently or otherwise.

MR. GREEN'S CLAIM NEVER CONSIDERED.

The Department refused to consider Mr. Green's offer to prove his right to the property by ample evidence as the following let-

ters from the Department show, and returned without consideration the affidavits which were offered in support of Mr. Green's claim:—

“March 16, 1906.

“Gentlemen:

Replying to your letter of the 13th inst., with respect to “the application of Mr. W. J. Green, for the bed of Cobalt Lake, I have to say, that as the Department is not prepared “to consider Mr. Green's application, there would appear to “be nothing to gain by examining the evidence as to Mr. “Green's discovery.

“Yours very truly,

“THOS. W. GIBSON,

Director.

“Messrs. Clark, McPherson, Campbell & Jarvis,
“Toronto, Ont.”

“March 22nd, 1906.

“Dear Sir,—

“I beg to acknowledge receipt of your letter of the 15th “inst. again enclosing the application and affidavits respect- “ing the claim of Mr. W. J. Green on the bed of Cobalt Lake, “and am instructed by the Honourable the Minister of Lands “and Mines to return the same to you, and to repeat that Mr. “Green's claim is not one which can be entertained.

Yours very truly,

“THOS. W. GIBSON,

“Director.

“J. M. Clark, Esq., K.C.,
“16 King Street, West,
“Toronto.”

THE LAKE NOT WITHDRAWN AT THE TIME.

THE EVENING TELEGRAM of April 5th reports the Honourable Mr. Foy as saying: “Everybody in Cobalt knew prior to that (Mr. Green's discovery), however, that the Lake was not open for prospecting and exploration.”

In THE EVENING NEWS of April 5th, the Attorney-General's words are reported as follows: “Because knowledge that the properties had been withdrawn was general in Cobalt at the time the discoveries were alleged to have been made.”

THE MAIL AND EMPIRE of April 6th, 1907, reports the Honourable Mr. Foy as having said: “These persons had alleged that they had made discoveries in ignorance of the Order-in-Council withdrawing the Lake from prospecting in spite of the fact that it was common knowledge in the whole district that prospecting was not allowed in the Lake.”

THE GLOBE reports Mr. Foy to have said: “Everybody in

Cobalt knew prior to that, however, that the Lake was not open for prospecting or exploration."

EVERYBODY THOUGHT COBALT LAKE WAS OPEN.

It was not generally known that Cobalt Lake was not then open for exploration, on the contrary the general impression was that it was open. This is now proved not alone by the evidence of those interested, but by independent outside evidence. Mr. Mercer Adams, for instance, shows that the diamond drilling on Cobalt Lake being done for Mr. Green was, as is natural, a general topic of discussion at the time and he and those with whom he discussed the matter all thought Cobalt Lake open for exploration and that the only difficulty was that of making discovery. The misunderstanding in this respect may have arisen from the Departmental memorandum dated 26th June, 1906, of which a copy is attached. This memorandum, however, is shown to be incorrect by the ruling of 13th July, 1905, just a little over a month previous to the Order-in-Council of 14th August, 1905.

In THE WORLD of 18th April, Honourable Mr. Foy is reported to have said "As to the Florence Mining Company, Cobalt Lake was not open for prospecting. It had also been proved that the discovery made by them had been made long before and was well known. A stranger coming to Canada might as well announce that he had discovered the Parliament Buildings."

As to Cobalt Lake not being open, all that need now be said, is that if the ruling of the Honourable the Minister of 13th July was legal, Cobalt Lake was open after the Order-in-Council of 30th October, 1905, and was represented to Mr. Green as open for exploration.

MR. GREEN'S DISCOVERY THE FIRST.

It is difficult to imagine what proof is referred to. No discovery on the bed of the Lake had ever been made until Mr. Green's discovery and none was or could be known.

DIFFICULT TO MAKE A DISCOVERY.

So far from it being an easy matter to locate mineral in place under Cobalt Lake the enterprise of Mr. Green and his associates and the skill of Colonel Gordon, were generally recognized. THE LONDON TIMES commented on the ingenuity of the mechanism he had devised and one of the leading papers here referred to his work as a brilliant engineering feat.

If making a valid discovery had been, as intimated to the Legislature, an easy matter, such a discovery would have been made before 14th August, 1905, when Cobalt Lake was admittedly open for exploration. On the 13th July, 1905, the Minister directed the Recorder that he might "accept and record claims in the bed of Cobalt Lake satisfying himself that actual discoveries of valuable mineral in place have been made, on the claims applied for." That no such valid discovery was made sufficiently established the contention in this respect of the Florence Company.

DISCOVERY ON ROAD ALLOWANCE NOT SUFFICIENT.

A discovery on the adjoining road allowance would not comply with the Act nor would a discovery of mineral not in place. The difficulties of making a discovery are explained in the evidence which also shows that the question had been discussed and considered by engineers on the ground.

NO DISCOVERY BY RAILWAY WORK.

It is particularly pointed out that as far as is known the construction work of the Temiskaming & Northern Ontario did not disclose any silver on the side of Cobalt Lake next the railway and on the opposite side from the railway the rock was so faulted as to make discovery difficult.

A MATTER OF COMMON KNOWLEDGE.

According to THE WORLD of April 6th, Honourable Mr. Foy said: "Everybody knew Cobalt Lake was not open and that veins are running into it."

In THE GLOBE of April 18th, Honourable Mr. Foy is reported to have stated: "The alleged discovery was to the knowledge of everybody at Cobalt, yet not one of them had the hardihood to come in to register a claim because it was well known that the Lake was not open for discovery." Everyone at Cobalt knew of Colonel Gordon's operations and of his discovery but not of any discovery. No one had ever before made a discovery in the bed of the Lake. The reason why no one else attempted to record a claim after the Dreany claim was reported against, and after the Order-in-Council of the 30th October, 1905, was not because it was well known the Lake was not open but because of the difficulty of making a valid discovery in the bed of the Lake. The Minister's ruling, already quoted, shows that the Lake was open on the 13th July, 1905, and this was precisely the position at the date of Mr. Green's discovery, 7th March, 1906.

The fact that the veins were running into the Lake, even if it were known, of which there is no evidence, would not be a sufficient discovery under the Statute to give anyone a right.

It seems plain, from the debate referred to, that both the Prime Minister and the Attorney-General believed Cobalt Lake had been reserved or withdrawn and was not open for exploration when Mr. Green's discovery was made. It seems equally plain that they were both mistaken in that belief. That it was not continuously reserved or withdrawn is conclusively proved by the following ruling of the Minister of Lands, Forests and Mines, dated 13th day of July, 1905, apart from the other evidence on the subject:

"RULING.

"Notify Mr. Smith that he may accept and record claims
"on the bed of Cobalt Lake satisfying himself that actual
"discoveries of valuable mineral in place have been made on
"the claims applied for.

"F. COCHRANE,
"Minister."

"13th July, 1905."

MINISTER'S RULING VALID.

If the ruling of the Minister of 13th July, 1905, authorizing claims to be located on Cobalt Lake was valid, Cobalt Lake was open for exploration after the Order-in-Council of 30th October, 1905, and at the time of Mr. Green's discovery.

Under the law as it stood at that time when a tract of land was declared a Mining Division and the Order-in-Council so declaring it was published in the Gazette, the Mining Division and all mines on Crown Lands situate in the Division were declared subject to the provisions of the Act and to any regulations to be made thereunder. It was also made clear that the Mining Division could only be extended, added to or diminished or the Order-in-Council declaring a Division amended or cancelled by a subsequent Order-in-Council.

The function of the Minister was clearly defined to be to administer and execute the law as declared by Statute and the regulations to be made by Order-in-Council.

The law has since been modified so as to increase the power of the Minister.

But as the law at that time stood, the limits of Mining Divisions could only be declared or altered by Order-in-Council and it clearly required the authority of an Order-in-Council to withdraw lands in a Mining Division from sale or lease. No such Order-in-Council was passed after the 5th day of April, 1905, until the 14th day of August, 1905.

The ruling of the Minister of the 13th of July, 1905, must be based upon the Order-in-Council of 5th April, 1905, setting aside the Temiskaming Mining Division, yet after this Order-in-Council it was claimed by the Department at one time that "it was still regarded and treated by the Department as withdrawn from sale." When the Minister and the other officials of the Department over which he presides arrived at diametrically opposite conclusions as to the effect of the Order-in-Council of the 5th of April, 1905, it cannot be wondered at that the officials of the Department placed different interpretations upon the Order-in-Council of the 30th October, 1905.

A GOVERNMENT DISCOVERY.

According to THE MAIL AND EMPIRE, of 18th April, Honourable Mr. Foy said: "The claim of the Florence Company was even more shadowy. It was not really an original discovery but primarily a discovery made by the Government on Government land and announced in the Mines Report."

The information given the Honourable the Attorney-General, on which he based the above statement, has since been proved to be wholly incorrect.

According to THE EVENING TELEGRAM, of 5th April, the Premier said: "Before any one thought of taking action to make claims in Cobalt Lake the Orders-in-Council withdrawing it were passed."

In **THE EVENING GLOBE**, of 5th April, the Premier is reported to have said that before anyone thought of taking action to make claims to Cobalt Lake the Orders-in-Council withdrawing it were passed.

The fact is that therefore the Order-in-Council of 14th August, 1905, action was not only thought of but attempted. This was by Dreany as already mentioned. He failed because his application was found not to be based on a valid discovery.

Whatever may be the legal construction or effect of the Order-in-Council of 14th August, 1905, which withdraws the Lake, i.e., the waters of the Lake, it is clear that after 30th October, 1905, the bed of Cobalt Lake was open for exploration and was generally considered open.

That the matter was generally discussed has been shown and it is clear that it was considered that the only difficulty was to make a discovery.

MR. GREEN'S RIGHT.

Mr. Green made a valid discovery on 7th March, 1906, and by virtue thereof became entitled to the twenty acres staked out by him and, to quote again from the Statute, to the "right to work the same." The words of the Statute "shall have right to work the same" are imperative and binding on the Minister of Lands, Forests and Mines, on the Department and on the Government.

HONOR AND DIGNITY OF THE CROWN INVOLVED.

The Claimants are confident that the Canadian Courts will be upheld by the Judicial Committee of the Privy Council in declaring that the words of the Statute are binding even on His Majesty and that the Honor of the Crown pledged, as it was, to Mr. Green must be vindicated by the maintenance of the rights of the Florence Mining Company.

LOOK AT THIS!

RULING:

Notify Mr. Smith that he may accept and record claims on the bed of Cobalt Lake satisfying himself that actual discoveries of valuable mineral in place have been made on the claims applied for.

13th July, 1905.

(Signed) F. COCHRANE,
Minister.

AND THEN AT THIS.

COPY.

Memorandum re Cobalt Lake.

The bed of Cobalt Lake was from the first reserved from exploration or disposal, the Hon. Mr. Davis, when Commissioner of Crown Lands, having in 1904, shortly after the discovery of rich ores in the Cobalt District, given directions that it should not be located.

It was **formally withdrawn** by Order-in-Council 14th August, 1905. Notice of this was given by at once sending a copy of the order to the Mining Recorder at Haileybury and instructing him to post it on the walls of his office. This the Recorder states, was done. Also by publishing the order in full in the Ontario Gazette, November, 1905.

All this took place long before Mr. Green or Mr. Gordon went on the Lake with their diamond drill, which was not until the winter of 1905-6, Mr. Green's application to record his claim being in March, 1906.

Nine months previously, namely in June, and also in July, 1905, one, M. H. Bessey, applied to record a claim on the bed of Cobalt Lake, alleging discovery of valuable mineral. This claim was pending at the time of Mr. Green's application, and is still pending and being urged.

(Signed) THOMAS W. GIBSON,
Deputy Minister of Mines.

Toronto, June 26th, 1906.

January 2, 1907.

Hon. J. J. Foy, LL.D.,
Attorney-General,
Parliament Buildings,
Toronto, Ont.

Dear Sir,—

Referring to the pending litigation in regard to Cobalt Lake I beg to suggest that a special case under the powers vested in your Government in that behalf might be submitted at once as to the proper construction and effect of the Order-in-Council of 30th October, 1905. As you are aware, The Florence Mining Company, Limited, contend that the opinions of Mr. Ritchie and Mr. Strathy that this Order-in-Council threw Cobalt Lake open for exploration are correct. If so, under the decisions with which you are familiar the vested right to the twenty acres of Cobalt Lake known as J.S. 71 of The Florence Mining Company is an interest in land and property. As a final decision would be obtained at an early date it seems to me that such a course facilitating a final decision of this point would be in the interest of all concerned.

I am,

Yours truly,

J. M. CLARK.

January 4, '06 ('07).

The Honourable Frank Cochrane,
Minister of Lands and Mines,
Parliament Buildings,

Toronto.

Sir,—

We have the honour to enclose herewith marked cheque for \$976,500 the balance of the purchase price of the Cobalt Lake Mining property, sold by tender, our tender for which was accepted by the Government.

We also enclose Assignment and Direction so that the Patent for this property may issue to the Cobalt Lake Mining Company, Limited.

The Cobalt Lake Mining Company have already been sued by the Florence Mining Company and others claiming to be entitled to the said property and claiming that the Cobalt Lake Mining Company held this property as Trustees for them.

We purchased the property on the understanding that the Government was in a position to and would give a Crown Patent and that we would receive the lands free from all claims against them. The purchasers feel that the expense which they will now incur in defending this action or in any litigation in regard to such claims should be borne by the Crown and feel that some assurance should be given that this will be the case in view of the large amount that is being paid for the property.

We have the honour to be, Sir,

Your obedient servants,

CONFISCATION.

Section 2 of 6 Edward VII (Ont.) Chapter 12 declares certain lands therein described to be and all mining rights therein and thereto "absolutely freed from all claims and demands of every nature whatsoever in respect of or arising from any lease or patent of any mining lands or mining location at any time granted."

REPUDIATION.

7 Edward VII (Ontario) Chapter 15 declares certain lands therein described "Absolutely freed from all claims and demands of every nature whatsoever in respect of or arising from any discovery, location or staking."

This is to be read in connection with the previous legislation which gave a licensee a statutory right to the lands in question if he made a discovery within the mining division. The Statute R.S.O. 1897, Chapter 36, Section 47, declared that the licensee "shall have the right to work the same or to transfer his interest therein to another licensee."

In the *Monetary Times* of 15th February, 1908, page 1355, it is pointed out that "such legislation is sheer confiscation, and amounts to an attempt at repudiation of the obligations of the Province."

The *Financial Post* of 22nd February, 1908, speaking with reference to similar litigation, refers to "the story of rapine and ruin that followed upon the buccaneering confiscating policy—for such it has been in effect—inspired by the Ontario Government;" and in another article of same issue says : "Confiscation of private property is against the British law."
